



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

February 25, 2022

Re: **Emerald BioEnergy, LLC
Notice of Violation (NOV)
NOV
NPDES
Morrow County
4IN00204*BD**

Ms. Cari Oberfield
Emerald BioEnergy, LLC
P.O. Box 249
Delaware, OH 43015

Subject: Notice of Violation

Dear Ms. Oberfield:

Ohio EPA, Division of Surface Water (DSW) performed inspections of the Emerald BioEnergy facility on January 31, 2022, and February 23, 2022. The goal of the inspections was to determine your facility's compliance with Ohio's environmental laws and regulations and the terms and conditions of Emerald's NPDES permit issued on May 1, 2021. In addition to the on-site inspections, a review of the monthly reports required by the NPDES permit was performed.

Violations

Ohio EPA observed the following violations of Ohio's environmental laws and regulations, and Emerald BioEnergy's NPDES permit terms and conditions. Ohio EPA DSW recommends you promptly address these violations.

Please pay special attention to the **Violation Description** and **Requested Action** associated with the violations listed below as they describe what exactly is in violation and the requested action to address the violation.

1. **Ohio Revised Code (ORC) 6111.07(A)**: No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense.

NPDES 4IN00204, Part II. M. 2.: The levels of the ponds shall not exceed the gallons available at the approved maximum operating level (MOL) listed below.

	L1	L2	L3	L7
Gallons at Approved MOL	5,485,068	387,693	331,764	20,769,686

- (a) **Violation Description:** During the February 23, 2022, inspection, levels of Ponds 1, 2, 3, and 7 were observed to be above the required maximum operating levels.

- (b) **Additional Information:** During the February 23, 2022, inspection, the markers for Ponds 1, 2, 3, and 7 that show the maximum operating levels were not visible. All maximum level markers were covered by the material in Ponds 1, 2, 3, and 7. See enclosed pictures.

Requested Action: Immediately begin removing material from Ponds 1, 2, 3, and 7 and take the material to a permitted NPDES facility for treatment. Enough material needs to be removed to bring all ponds below the approved maximum operating levels. In accordance with Part II. M. of the NPDES permit, approved MOLs shall always be maintained and no effluent shall be transferred to a pond when the level is at or above MOL. The NPDES permit also requires that only effluent that has been treated by anaerobic digestion at Emerald shall be stored in the ponds and no other feedstocks shall be placed directly into the ponds.

Provide the following information:

1. Starting on the day after issuance of this NOV, submit daily reports to Ohio EPA that include the following:
 - a. Volume of material removed from each pond;
 - b. Pond number where material was removed;
 - c. NPDES facility receiving the material for treatment;
 - d. Levels of each pond.

This daily reporting shall continue until this violation is resolved by Ohio EPA.

2. For all material added to ponds since May 1, 2021:
 - a. Pond number where material was added;
 - b. Date material was added to the pond;
 - c. Volume of material added to the pond;
 - d. Type of material added to the pond.

2. **ORC6111.07(A)**: See above.

NPDES 4IN00204, Part III. A.: At all times, the permittee shall maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee necessary to achieve compliance with the terms and conditions of this permit.

- (a) **Violation Description:** During the January 31, 2022, inspection, Ohio EPA discovered that the 230,000 gallon feedstock tank, also known as the biomass equalization tank, had been removed.
- (b) **Additional Information:** The feedstock tank was damaged in February 2021, at which time Renergy stated that they were assessing whether to repair or replace the tank and that operations were back to normal using the lower section of the tank. The tank was still in place during an Ohio EPA inspection on August 26, 2021. Ohio EPA was not notified that the tank was removed.

The feedstock tank is an integral part of treatment system approved by PTI 873442. Blending of the solids and liquid feedstocks prior to the anaerobic digester produces a more homogeneous loading and consistent feed rate. The sampling required by the NPDES is based on use of the feedstock tank.

- (c) **Requested Action:** Please submit a plan for replacement in kind of the feedstock tank, a Permit-to-Install (PTI) for operating the facility without the feedstock tank, or a PTI for the installation of a new different size tank.

3. **ORC6111.07(A)**: See above.

NPDES 4IN00204, Part II. M. 6.: Adequate storage volume shall be provided and maintained to enable the facility to comply with the MOL requirement and minimum facility storage requirement of at least 120 days. No later than September 15 of each year, the permittee shall evaluate the storage capacity in the ponds and complete a storage evaluation form to be submitted to Ohio EPA by November 1. The storage evaluation shall demonstrate that by December 1, the MOL and minimum facility storage will be maintained in each pond. Failure to submit the evaluation or to take actions the evaluation indicates are necessary shall be considered a violation of this permit.

(a) **Violation Description:** The required storage evaluation has not been submitted.

(b) **Requested Action:** Since land application from the ponds should begin this spring, rather than submit the winter storage evaluation at this time, please provide an explanation for the discrepancies in reported levels compared to actual levels noted during the inspection for L1, L2, L3, and NEL and a plan to ensure going forward accurate levels are reported.

4. **ORC6111.07(A)**: See above.

NPDES 4IN00204, Part I.C. SCHEDULE OF COMPLIANCE: 1. STABILITY: Not later than 6 months from the effective date of this permit, the permittee shall submit a plan to implement a method to demonstrate a stable digestate. a.) Ohio EPA will review the plan and provide comments to the permittee. The permittee shall respond to any comments as noted by Ohio EPA within 14 days of receipt. b.) Within 14 days of notification of acceptance of this plan by Ohio EPA, the permittee shall initiate implementation of the plan, including any revisions necessary to address Ohio EPA comments, and submit an NPDES permit modification request for the inclusion of alternative stability assessment parameters.

NPDES 4IN00204, Part III. 12.D.: If the permittee is unable to meet any date for achieving an event, as specified in a schedule of compliance in their permit, the permittee shall submit a written report to the appropriate Ohio EPA district office within fourteen (14) days of becoming aware of such a situation.

(a) **Violation Description:** The required stability plan has not been submitted.

(b) **Requested Action:** Please submit the stability plan required by the Schedule of Compliance.

February 25, 2022

Page 4 of 10

5. **ORC6111.07(A)**: See above.

NPDES 4IN00204, Part I.B.: Groundwater Monitoring. The permittee shall monitor piezometer PZ-1, PZ-2, PZ-3, and PZ-4 at Stations 701, 702, 703, and 704. Sampling shall be performed two times per year in June and December.

(a) **Violation Description:** Groundwater monitoring results for June 2021 and December 2021 for stations 701, 702, 703, and 704 as required by the NPDES have not been reported in eDMR.

(b) **Requested Action:** Please provide a sampling plan detailing the steps to be taken to ensure the required samples are collected and reported.

Conclusion

Immediate action is required to resolve the Maximum Operating Level violation. Submittal of the daily reports requested for Violation 1 shall commence on the day after receipt of this NOV.

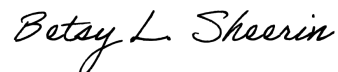
No later than March 4, 2022, submit the requested plans and provide documentation to Ohio EPA DSW of the actions taken and/or will be taken to resolve the violation cited above.

Requested documentation shall be submitted electronically to betsy.sheerin@epa.ohio.gov and david.emerman@epa.ohio.gov. If circumstances delay resolution of this violation, Emerald BioEnergy is requested to contact Ohio EPA to discuss the situation and propose an alternative schedule to resolve the violation in a timely manner.

Please note that the submission of any requested information to respond to this letter does not constitute waiver of the Ohio EPA's authority to seek administrative or civil penalties as provided in Section 6111.09 of the ORC.

Should you have any questions, please contact me at betsy.sheerin@epa.ohio.gov or 614-644-2150.

Sincerely,



Betsy L. Sheerin, P.E.
Environmental Specialist III
Ohio EPA Division of Surface Water

Enclosures

ec: Erin Sherer, Ohio EPA DSW/CO
David Emerman, Ohio EPA DSW
Scott Sheerin, Ohio EPA DSW/CO
Isaac Robinson, Ohio EPA DSW/CDO
Sam Mullins, ODA DLEP



Southeast corner of Pond 1



South berm of Pond 1



Pond 1 on the left, Pond 7 on the right



Pond 1 on the right, Pond 7 on the left



West end of Pond 7



West end of Pond 7



Pond 7 facing Southeast



Pond 7 facing Northeast



East side of Pond 2



Pond 2 facing Northwest



East end of Pond 3



Pond 2 on the left, Pond 3 on the right